In The Supreme Court of The United States

IN THE MATTER OF THE ESTATE OF MARY L. JOHNSON, Deceased.

LUCENA ELIZABETH CLARK JOHNSON,

Petitioner,

vs.

PORTLAND TRUST AND SAVINGS BANK,

Respondent.

Docket No. 605

REPLY TO RESPONDENT'S ANSWER TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

LUCENA ELIZABETH CLARK JOHNSON,
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Respondent's answer to the petition for writ of certiorari herein is for the most part irrelevant in that it attempts to refute a contention not made by petitioner, namely, that the proceedings of the Superior Court of Clark County, Washington, were ineffective because there was no personal service upon the petitioner.

Petitioner's position is not based upon the fact that there was inadequate service upon her. It is rather that

she was deprived of her rights to due process of law under the 14th Amendment by reason of the fact that the Superior Court of Clark County, Washington, conducted probate proceedings, entertained therein an accounting of trust properties and assets located and theretofore being administered upon in the State of Oregon, and issued a decree of distribution, all in an estate of which petitioner was beneficiary, over her objections that the court had no jurisdiction because neither domicile nor property of the defendant was located in Clark County, Washington.

It appears to be further the contention of respondent in its answer that the petitioner is precluded from questioning the validity of the decree of distribution issued by said Clark County Superior Court because such a decree is a final judgment, concluding all rights in the property of which disposition is made by the decree.

The answer to that contention is found in the rule that "a fundamental principle of procedure recognized and applied by courts in every country where judgments are rendered only upon notice and inquiry as distinguished from those countries where a dictator's will is the law, is that a judgment rendered by a court without jurisdiction is not a final and binding judgment." *In re Waters Estate,* 153 S.W. (2d) 774; *Parr v. City of Seattle,* 197 Wash. 53, 84 P. (2d) 375; *United Production Corp v. Hughes,* 152 S.W. (2d) 327; *In re Hanrahan's Will,* 109 Vt. 108, 194 At. 471.

Respondent contends also that the petition should be dismissed for the reason that neither a statute of the United States nor the validity of any state statute is drawn in question as provided by Section 1257 Fed. Code Ann.

Respondent has overlooked that part of said Section 1257 which reads: " * * * or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * * ."

As pointed out in the petition herein, the assumption of jurisdiction by a court where no basis therefor exists is a denial of due process and a violation of petitioner's rights under the 14th Amendment of the Constitution of the United States.

The assumption of jurisdiction by a court of probate without the meeting of the basic jurisdictional requirements is a denial of due process as is made clear by *Scott v. McNeal*, 154 U.S. 46, 37 L. Ed. 896.

Respondent apparently in its answer also asserts that the objection of petitioner in the Superior Court for Clark County, which challenged the power of the court to proceed to a decision, did not draw into question the validity of any authority exercised by the state court. It is, of course, axiomatic that a challenge to the jurisdiction of a court such as was made by petitioner in the case at bar, brings into question the validity of any act done under an improper assumption of jurisdiction.

Respondent further states in its answer that the case of *Portland Trust and Savings Bank v. Gallin, et al.*, decided by the Supreme Court of Oregon, is a bar to the opening of any controversy concerning an accounting prior to the date of that case. The said case has no bearing upon the issue of improper assumption of jurisdiction as a denial of due process as raised by this petitioner.

Respondent, having argued that the courts of the State of Oregon had jurisdiction of the trust being administered by the respondent in Oregon, cannot now consistently say under any theory whatsoever that the respondent could lawfully and properly make an accounting of such trust in a probate proceeding carried on in the Superior Court for Clark County, Washington, where no jurisdiction existed in said court over such probate proceedings.

CONCLUSION

Petitioner believes therefore that the answer of the respondent fails to disclose any reason why this court should not now issue a writ of certiorari herein as prayed for by petitioner.

Respectfully submitted,

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